

Midwest Environmental A D V O C A T E S

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The French Island Incinerator Must Comply with Federal Standards for Large Incinerators.

Northern States Power's (now Xcel) French Island incinerator in La Crosse, Wisconsin, is the largest municipal waste incinerator in the state. But is it large under federal law? And has the corporation evaded federal clean air standards, potentially threatening public health?

The incinerator looms among the glorious bluffs, forest, and farmland of the Mississippi River Basin, and uses a short smokestack to deliver its toxic emissions to the surrounding environment. For years Northern States Power has claimed that the incinerator is not a threat to public health or an environmental hazard. However, the incinerator emits a significant amount of dioxin and continually violates its state-issued operating permit (almost every year since 1989). Now, facility operators are trying to escape stricter federal regulations aimed at protecting public health and the environment.

On October 26, 2000, the United States Environmental Protection Agency (EPA) formally determined that the French Island Incinerator is "large" and must comply with the Federal Plan for reducing emissions by December 19th of this year.

This decision came out on the side of public health despite numerous claims by the polluter that it should not be held to the more stringent standards.

In the mid-1990s, the polluter applied for a Title V federal permit to operate and has yet to obtain it. Why? One reason is that there has been confusion about which standards apply to this incinerator. If it is large, federal standards apply and it must install control technology. If it is small, no federal standards apply for toxic air emissions.

Congress recognized that incinerators create air pollution that may endanger public health or welfare, and responded by passing the 1990 amendments to the Clean Air Act. These new laws required EPA to limit the emissions coming from municipal waste incinerators. Emissions from the French Island incinerator contain organics (dioxins/furans), metals (cadmium, lead, mercury, particulate matter, and opacity), acid gases (HCl and sulfur dioxide) and nitrogen oxide. The French Island incinerator's mercury and dioxin emissions are of particular concern because of their tendency to bioaccumulate as they move up the food chain, contaminating fish, meat, dairy products, and ultimately, the people who consume those foods.

Back on December 19, 1995, the EPA created new standards for plants, such as the French Island incinerator, that were constructed on or before September 20, 1994, and burn over 35 tons of garbage per day. A court order modified this rule on August 25, 1997, and applied it only to "large" incinerators that burn over 250 tons per day.

Around the same time, NSP applied for a federal Title V operating permit. In that permit application, the company claimed that one of its two boilers could burn up to 12 tons per hour of RDF – Refuse Derived Fuel – or shredded municipal garbage. This means that the incinerator has the capacity to burn 288 tons per day in just **one** of its boilers and should fit into the "large" category.

Yet, NSP worked hard in Washington proclaiming that it fell into the "small" category, a category that is conveniently unregulated by federal law.

In March of 1997, the EPA sent a letter to NSP agreeing with NSP's assertion that it is a small incinerator not subject to the new restrictions on toxic emissions. The EPA relied on the truthfulness and accuracy of NSP's statements, and never checked the basis for NSP's claim. Several months later, in September of 1997, the DNR sent a letter to the EPA certifying that it had no large municipal waste incinerators in the state. As far as our "regulators" were concerned, the issue was settled: The French Island Incinerator did not have to reduce its toxic air pollution and could continue to operate as usual.

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A coalition of groups organized to protect our air and water resources were not deterred. Midwest Environmental Advocates (MEA), an environmental law center whose mission is to represent communities whose rights are being abused by polluters, Wisconsin's Environmental Decade (WED), and the DownRiver Alliance, a Mississippi River environmental advocacy group investigated this facility.

These groups found that, based on the company's own statements, the incinerator is a large incinerator and must install new technology to control its toxic emissions, stop burning garbage, or cease operations. MEA and WED toured the incinerator in April of 2000 and created a video showing all the points in the system that make it a large incinerator. Armed with this video, the incinerator's own statements in its permit application and other company documents, the groups convinced the EPA to reopen its investigation of the incinerator and reconsider its decision on the applicability of the regulations.

The EPA's recent decision that the French Island Incinerator is "large" affirms our right to clean air and water. We applaud the EPA for making a decision based on facts and law, rather than corporate lobbying efforts. Now is the time for the company to act responsibly and protect public health by upgrading its facility or shutting down.

Melissa K. Scanlan
Legal Director
Midwest Environmental Advocates, Inc.
122 State St., Suite 200
Madison, WI 53703
608-251-5047
{ HYPERLINK <http://www.midwest-e-advocates.org> }